

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR**

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 9469 of 2004

Between:

Chinta Jayaprakash, S/o.Chinta Venkateswarlu,
R/o.Seri Landa, Serilanka Post,(Via), K.K.Palem,
Pamaru Mandal, E.G.Dist.

..... PETITIONER

AND

- 1 The Registrar, N.T.R.University of Health Sciences, Vijayawada,
Krishna Dist.
- 2 Dr.Jesudas, S/o.not known
N.T.R.University of Health Sciences, Vijayawada, Krishna Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, more particularly one in the nature of writ of Mandamus directing the 1st respondent to admit the petitioner into M.D.S (Paedodontics & Preventive Dentistry) course by treating the petitioner as local candidate under SC-C category by declaring the action of the 1st respondent in denying admission to the petitioner as illegal, arbitrary and violative of Article-14, 15 & 19(1) (g) of the Constitution of India.

Counsel for the Petitioner:MR.V.AJAYAKUMAR

Counsel for the Respondent No.: SMT.Y.PADMAVATHI

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

W.P.No.9469 of 2004

ORDER:

The petitioner is a student, seeking admission into Post Graduation Course, filed this writ petition *inter alia* seeking writ of Mandamus directing the first respondent to provide admission to him into MDS (Paedodontics & Preventive Dentistry) course by treating as a local candidate under SC-C category.

The case of the petitioner in brief is that he is a permanent resident of Serilanka Village, Pamarru Mandal, East Godavari District. His father Chinta Venkateswarlu stayed in the very same village and retired as a Lecturer by residing in the said village. However, since there is no proper educational facilities available in the vicinity, the petitioner had to study from 1st class to V class in Central Boys High School, Yanam, from Vth to Xth class in Jawahar Navodaya Vidyalay, Metkur, Yanam and Intermediate Education course in STPP Government Junior College, Yanam, which was conducted by the Board of Intermediate Education, Andhra Pradesh, and from 1995 to February, 2001 he studied BDS Course in Central University at Pondichery. The said place viz., Yanam is hardly 5 KMs from his village, and therefore, the petitioner has to travel up and down from his village for the purpose of education.

Subsequent to the completion of BDS Course, in pursuance of a notification issued by the respondent No.1, dated 29.04.2004, for conducting entrance test for admission into MDS Course, the petitioner has written the test and obtained 78th rank with H.T.No.043039. However, his admission was denied during the counseling held on 27.05.2004 on the ground that he belongs to nonlocal area as entire education is from Yanam. The petitioner had in fact produced original Caste-cum-Nativity certificate for the purpose of obtaining admission by virtue of residence and yet the same was denied. It is submitted that it is only for want availability of the

educational facilities, the petitioner had to go to Yanam, otherwise the entire family is resident of Serilanka Village. Instead another candidate Dr.Jusudas (H.T.No.043054) having obtained a rank of 170 was given in admission, which is illegal. Even otherwise it is contended on behalf of the petitioner that having regard to the residence of the petitioner and his family in the Serilanka village, as per regulation 3 (b) (I) a&b (II) (i), he should have been given admission by virtue of the residence since the same is also substantiated by the certificate issued by the authorities as required. It is also pointed out that in the similar circumstances basing upon the residence though the education is outside, this court has allowed the similar request of a candidate as per the order in W.P.No.2837 of 1995, hence, the petitioner is also entitled for the selfsame relief.

In view of the same, necessarily it calls for to consider the case of the candidates on the basis of the permanent residence of the parents and not otherwise. Therefore, the denial of admission of the petitioner is wholly in the teeth of the aforesaid provisions and totally arbitrary. Hence, the writ petition.

In the counter affidavit filed by the first respondent herein, it was stated that having regard to the educational course, which the petitioner has undergone outside the state, as per the definition of the local candidate under Section 4 of the Presidential Order and also Section 11 of G.O.ms.No.646, the petitioner would not come well within its ambit. Further, since the petitioner himself has studied the BDS Course outside the State, he will automatically become a nonlocal candidate for consideration for admission into MDS Course.

It is true that it was submitted in the counter affidavit that those who did not qualify as a local candidate under sub-regulation 3 (B) (I) (a) and (B) (II) (i) but claim to qualify by virtue of residence shall have

to produce a certificate issued by the office of the Revenue Department not below the rank of a Mandal Revenue Officer in the form as annexed in G.O.P.No.628, Education, dated 25.07.1974. However, since the petitioner did not reside in local area for a period of not less than 4 years immediately preceding the date of commencement of the relevant qualifying examination in which he appeared, the petitioner cannot get qualified. Therefore, the petitioner's claim is wholly unsustainable and cannot be accepted.

In the counter affidavit filed by the contesting second respondent, who has been given admission herein, the very same allegations are reiterate to the effect that the petitioner has undergone education outside the State and having studied BDS graduation course in Pondichery, he cannot claim as a local candidate, more so, he did not reside for the prescribed period as contemplated under Presidential Order. Hence, there are no merits in the writ petition and the petitioner cannot seek any claim.

Considering the submissions made and on perusal of the material, the only question which falls for consideration in this writ petition is as to whether the petitioner can seek admission into the Post Graduate Course of MDS, having studied entire education from school education to graduation course outside the State as local candidate.

Having regard to the pleadings filed on either side, there is no dispute to the fact that the petitioner's parents are residents of Serilanka Village and Post in Pamarru Mandal of East Godavari District. Further, it is stated that having regard to the want of educational facilities available, the petitioner had to undergo his school education and also graduation in BDS course outside the State i.e., in Pondichery. The petitioner belongs to SC-C category,

whereas under the notification issued on 29.04.2004 for admission into the MDS course, one seat was earmarked for the said category. The petitioner, in the entrance test conducted for such course in pursuance of the said notification, had obtained 78th rank with H.T.No.043039, whereas the contesting second respondent, who has been given admission, obtained the rank at 170.

No doubt, on the basis of his education, the petitioner cannot make any claim as a local candidate. However, the fact remains that the petitioner's family are residents of Serilanka village in East Godavari District and the petitioner's father admittedly served as a Lecturer in the very same village and retired. It is not the case that the petitioner's parents also stayed away from the village and due to which the petitioner has to undergo his entire education outside the State. There is also no dispute to the fact that in and around the petitioner's native village i.e., Serilanka, there are no such educational facilities and the Yanam is hardly 5 KMs from the said village, and therefore, the petitioner was sent to yanam village everyday by travelling up and down for the purpose of education. Having thus obtained a graduate degree in BDS, the petitioner now seeks admission into postgraduate course as a local candidate not on the basis of his education, but on the basis of his permanent residence.

Apparently, having regard to the allegations as made in the counter affidavit of the respondent No.1, the petitioner's denial for seeking admission into the postgraduate course, squarely rests only on the ground that the petitioner has undergone entire education outside the State, and apparently the petitioner's claim was selfsame relief and based upon the Regulation 3 (b) (I) a & b (II) (i) has not been considered from proper perspective. There is also no serious dispute to the fact that the petitioner had filed a certificate obtained from the competent authorities as required to show that the petitioner

is a resident and native of the said village i.e., Serilanka. Having regard to such material available which conclusively show that the petitioner and his family are permanent residents of Andhra Pradesh and his case squarely falls within the aforesaid Regulation 3 (b) (I) a & b (II) (i), no other reason has been shown as to why the petitioner did not extend the said benefit under the said Regulation.

Having regard to the same, the respondent No.1 herein ought to have considered petitioner's case at least on this alternative basis, as allowed under the very same Regulation.

As long as the parents of the petitioner are not shifted outside the State of Andhra Pradesh and a candidate has undergone education at such place, it cannot be said that he is not a local candidate. Necessarily, it follows that the petitioner had to seek the educational pursuits only for want of facilities in his village. In the circumstances, it is to be held that as contemplated under Regulation 3 (b) (I) a & b (II) (i), the petitioner squarely falls within the definition of local candidate.

Even otherwise, it is to be seen that the petitioner not only belongs to SC-C category but also has secured fairly higher rank i.e., 78, whereas, on such unsustainable plea the second respondent who had obtained a rank at 170 is given admission, which ex-officio is wholly arbitrary.

In the circumstances, the writ petition is accordingly allowed with a direction to the respondent No.1 to consider the petitioner's case as a local candidate in terms of Regulation 3 (b) (I) a & b (II) (i) and for providing admission into the MDS Course in terms of the

notification issued on 29.04.2004. No order as to costs.

(B.PRAKASH RAO, J)

Dated: -11-2004

Ycr/dsr

To

1. The Registrar, N.T.R.University of Health Sciences, Vijayawada,
Krishna Dist.
2. 2 C.D. copies.